

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43874
Docket No. SG-45120
20-3-NRAB-00003-180535**

The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of C.A. Dawson, for assignment to the Electronic Technician/Inspector (ETI) position advertised on Bulletin No. Z5S52634, compensation for the difference in pay between that of a Skilled Signalman’s position and the ETI rate of pay for all hours, including overtime, worked on the ETI position Carrier failed to assign him to from February 13, 2017, continuing until he is assigned to said position; account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it failed to hold an Unjust Treatment Hearing after improperly assigning said ETI position to a junior employee. Carrier's File No. 1682377. General Chairman’s File No. N 0088. BRS File Case No. 15849-UP. NMB Code No. 32.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On January 10, 2017, the Carrier disqualified the Claimant from the position of Skilled Electronic Technician Inspector (ETI) due to failing the Signal Asset Test. On February 10, 2017, the Carrier assigned a junior employee to a bulletined ETI position rather than the Claimant. The Organization then requested an Unjust Treatment Hearing pertaining to the improper assignment of the bulletined ETI position, which the Carrier denied. The instant claim resulted from the Carrier's denial of holding the requested Unjust Treatment Hearing.

In summary, the Organization argues a) the Carrier violated Rule 57 by denying the Claimant his right to an Unjust Treatment Hearing, b) the Claimant had successfully passed the Foreman's test and possessed an FCC license and was therefore the senior qualified employee for the position, and c) arbitral precedent supports the Organization's position.

In summary, the Carrier argues a) the Carrier has the managerial right to determine fitness and ability, b) the Organization failed to follow the appropriate method to dispute the assignment under Rule 1, and c) the Organization failed to meet its burden of proof.

In the instant case, the Carrier argues that the Organization failed to follow the appropriate method to dispute the assignment per Rule 1, Note. In relevant part Rule 1, Note states the following:

"Positions of ...electronic technician will be bulletined and appointments made with due consideration for seniority, fitness and ability, the management to be the judge. In the event a senior applicant for a bulletined permanent position is not assigned, and the position is assigned to a junior employee, the senior applicant will, upon written request by the General Chairman to an officer designated by the Carrier within ten (10) calendar days of date of assignment notice, be given a standard practical, oral and written test conducted jointly by the Carrier and the General Chairman to determine if the individual can demonstrate fitness and ability to be assigned to the position. Such test will be given within ten (10) working days, unless extended by mutual agreement after request is made therefor. If the senior applicant passes the test, the employee will be

assigned to the position and the junior assigned employee will revert to the position formerly held...”

In relevant part, Rule 57, Unjust Treatment states the following:

“An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal as provided in Rule 55 B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint...”

After a thorough review of the record, the Board agrees with the Carrier in that Rule 57 does not apply if a grievance is covered by other rules of the Agreement. Rule 1, Note, is specific as to the process a senior applicant is to follow when a junior employee is assigned to an ETI position. In the instant case, the Claimant failed to follow the specific process for situations such as this. As a result, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of January 2020.